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FEB 27 1997

CROWELL & MORING LLP

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44 (171) 413-0011  
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JOHN T. SCOTT, III  
(202) 624-2582

February 27, 1997

EX PARTE OPINATE FILE

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: Ex Parte Notice: CC Docket Nos. 94-102, 95-116,  
96-115, and 96-162; NSD File No. 96-15; RM-8897

Dear Mr. Caton:

On February 26, 1997, S. Mark Tuller, Vice President - Legal and External Affairs, General Counsel and Secretary of Bell Atlantic NYNEX Mobile, Inc. ("BANM"), Thomas C. Blum, Director - External Affairs of BANM, and the undersigned counsel to BANM met with Michele Farquhar, Chief of the Wireless Telecommunications Bureau, and the following Bureau Staff: Nancy Boocker, Terry Fishel, David Furth, Ramona Melson, and David Wye. BANM discussed its positions in the above-referenced dockets, as set forth in its pleadings which were previously filed in those proceedings. BANM also provided copies of a previous ex parte filing it had made in CC Docket No. 96-115. An additional copy of that filing is attached hereto for inclusion in the ex parte file for that docket.

Should there be any questions regarding this matter, please contact the undersigned.

Very truly yours,

*John T. Scott, III*

John T. Scott, III

cc: Michele Farquhar  
Nancy Boocker  
Terry Fishel  
David Furth  
Ramona Melson  
David Wye

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Nancy Boocker  
Terry Fishel  
David Furth  
Ramona Melson  
David Wye

Bell Atlantic NYNEX Mobile, Inc.  
180 Washington Valley Road  
Bedminster, NJ 07921  
908 306-7392  
FAX 908 306-7320

Katherine S. Abrams  
Regional Counsel

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Mr. William F. Caton <sup>500</sup> <sup>L 500</sup>  
Secretary  
Federal Communications Commission  
1919 M. Street, N.W. Room 222  
Washington, D.C. 20554

Re: CC Docket No. 96-115 / & WT Docket 96-162 Ex Parte Notice

Dear Mr. Caton:

I am Regional Counsel for Bell Atlantic NYNEX Mobile (BANM), and I am writing to request prompt disposition of the pending Docket No. 96-115 in which the Commission proposes to propound rules concerning the use of Customer Proprietary Network Information (CPNI). BANM is a joint venture of Bell Atlantic and NYNEX and provides cellular service in markets throughout the East Coast. BANM competes with AT&T Wireless in the New York/Northern New Jersey cellular market. BANM is at a competitive disadvantage in the New York/Northern New Jersey marketplace because of the gross inequity that exists in the application of the current CPNI rules.

Section 702 of the Telecommunications Act of 1996, (new Section 222 to the Communications Act of 1934) "PRIVACY OF CUSTOMER INFORMATION", specifically provides that "except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information, in its provision of (A) the telecommunications service from which such information is derived ...". In its Comments filed in the above-captioned Docket, AT&T Corporation advocated a broad reading of the term "telecommunications service".<sup>1</sup>

Without waiting for the Commission to concur with its views, AT&T is currently conducting a direct mail and telemarketing campaign in the New York/Northern New Jersey cellular market area using its long distance customer list to market and promote AT&T's cellular service. The enclosed undated letter is addressed to Ms. Diane Whitehead, who happens to be the Executive Director of Marketing for Bell Atlantic NYNEX Mobile's New York market. As you can see, this letter is advertising AT&T cellular service. Subsequent to her receipt of his letter, Ms. Whitehead received an outbound telemarketing call from AT&T. According to the telemarketing representative, she was calling AT&T's long

William F. Caton  
Secretary  
Federal Communications Commission  
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Page 2

distance customers in the New York market with a "special wireless offer". The telemarketing representative offered Ms. Whitehead a free cellular phone, 30 minutes of local cellular airtime each month for one year, and no activation fee. She also described the AT&T Wireless 3810 cellular phone and described its length, weight, and warranty specifics.

Ms. Whitehead asked the representative how she came to be on the list to receive the mailing and phone call, and the representative said it was because she was a "valued customer". Ms. Whitehead then asked her a "valued customer of what?" The telemarketing representative told her that she was "a valued long distance customer."<sup>2</sup> AT&T has access to Ms. Whitehead's name, address, and phone number because of AT&T's provision of Ms. Whitehead's landline long distance service. However, AT&T is using that information to attempt to provide Ms. Whitehead with cellular service.<sup>3</sup>

BANM is under a competitive disadvantage until the FCC acts. As written, the Cellular Separation Rules currently prohibit Bell Atlantic or NYNEX from providing BANM with their landline CPNI unless that same information is made publicly available.<sup>4</sup> Therefore, BANM is competitively disadvantaged by the current application of the CPNI rules.

I am aware that in CC Docket 96-115 the FCC is currently reviewing the CPNI Rules. It is critical that the FCC give carriers clear guidance on the use of such information. I am also aware that in WT Docket 96-162 the FCC is reviewing the cellular separation rules. BANM believes that the cellular separation rules have been effectively repealed by the Telecom Act. However, BANM has cautiously refrained from acting on that belief until the FCC issues a decision.

Therefore, until such time as the FCC adopts a new rule that permits carriers unrestricted use of their CPNI, the Commission should order AT&T to cease this promotion and cease all further use of its landline long distance customer list for the marketing of cellular service. Alternatively, the Commission

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<sup>2</sup> A copy of the mailing is attached for your information. Also attached is a copy sent to Jay Liotta, a New Jersey resident who is the husband of a BANM paralegal. Both Ms. Whitehead and Mr. Liotta have AT&T landline long distance on their home telephones, but are BANM cellular customers. This indicates that AT&T is distributing the mailing to their landline long distance customers who reside anywhere in BANM's New York or New Jersey cellular service area.

<sup>3</sup> AT&T did include a 30-minute long distance offer on the home phone along with the cellular promotion. However, it is clear both from the envelope (a copy of which is enclosed) and the offer text, that the primary purpose of the offer is cellular. Indeed, the telemarketing representative, spent virtually the entire call discussing the cellular offer and the attributes of the "free" cellular phone.

<sup>4</sup> 47 CFR 22.903 (f). AT&T is not required to make its customer list publicly available.

William F. Caton  
Secretary  
Federal Communications Commission  
November 26, 1996

Page 3

should immediately permit BANM to use landline CPNI to market its cellular service. Whatever the result, it must afford BANM the same opportunities as those afforded to its marketplace competitors.

Sincerely,

A handwritten signature in cursive script, appearing to read "Katherine S. Abrams".

cc: Mark Rosenblum, AT&T  
Regina Keeney  
Michelle Farquhar



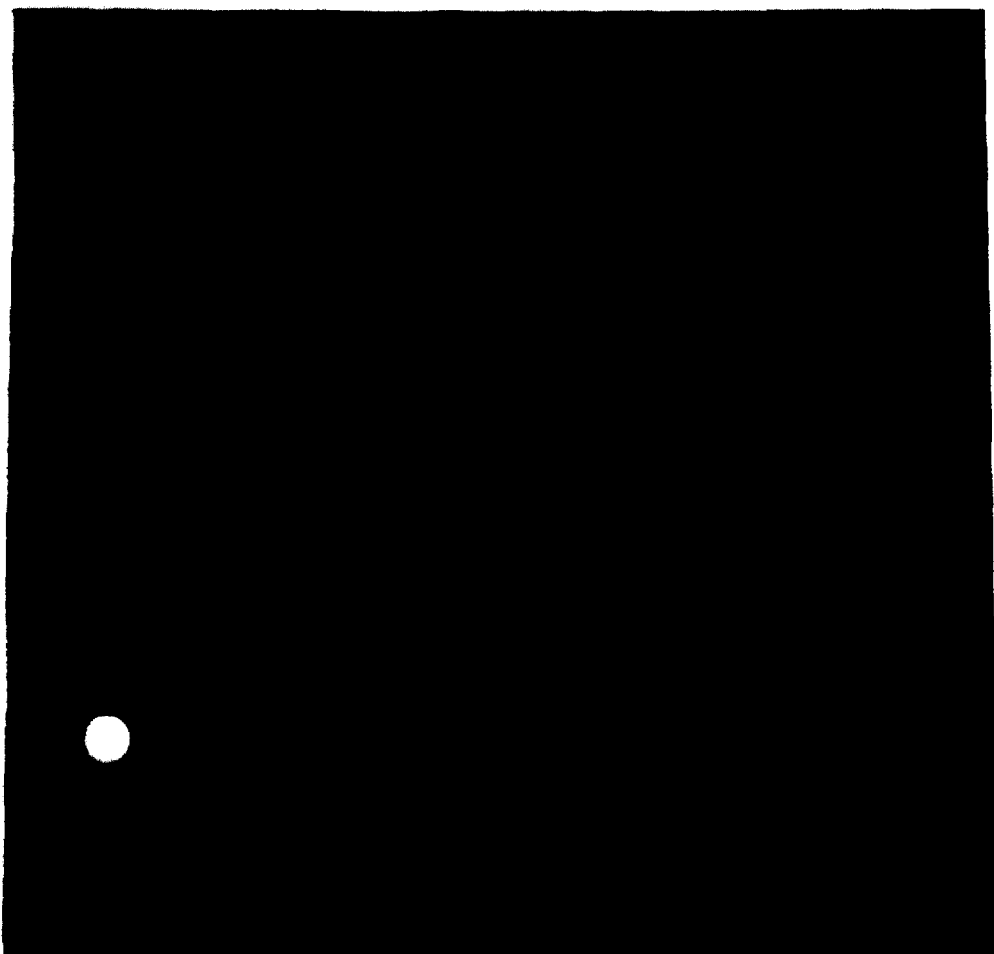
PRESORTED  
FIRST-CLASS MAIL  
U.S. POSTAGE  
PAID  
AT&T

Diane Whitehead  
61 E. 77th St. Apt. 9C  
New York, NY 10021-1864



An extraordinary offer that's making  
cellular communication an everyday convenience.

• Free cellular phone • 30 minutes of residential  
AT&T Long Distance included each month • 30 minutes of local  
cellular airtime included every month for a year





You've got a life.  
Now get the phone to go with it.

on recycled paper.

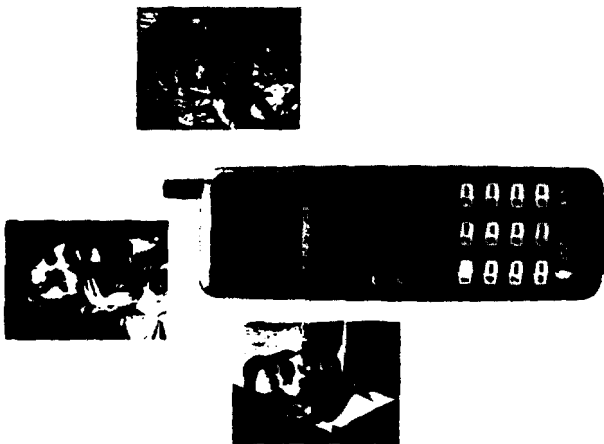
DLANY4QI © 1996 AT&T. All Rights Reserved.



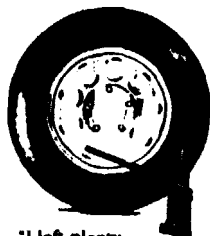




**AT&T**  
Your True Choice™



You've got a life.  
Now get the phone  
to go with it.



"I left plenty of time to get to the airport, but I didn't factor in car trouble. Fortunately, I've got my cellular phone, so the tow truck is on its way. And I called a cab. I'll be there as soon as I can."



"I'm in the cab now and traffic isn't so bad. The driver says we'll be at the airport in about twenty minutes. Is Tim there? Maybe he can brief me now, since I'll be walking into the meeting late."



"You still have two tickets left? For Saturday night? Fantastic. Okay, I'll hold. I'm just waiting here at the airport."



"Yeah, the meeting went really well. I'm about to go into the supermarket. What kind of pasta did you say you wanted? The long thin kind? The short fat kind? How about bow ties?"



"Good news!  
They accepted  
your offer! Do  
you want to see  
the house  
again? Okay,  
I just have to  
drop my son  
off at softball  
practice. Meet  
me at my office  
in about half  
an hour."



"Mom, I'm so glad  
you're feeling  
better. Yes, it must  
have been some-  
thing you ate. Got  
to run, I'm late for  
an appointment.  
Give my love to  
Dad. Remember,  
we'll be over  
tomorrow with  
the kids."

## complete

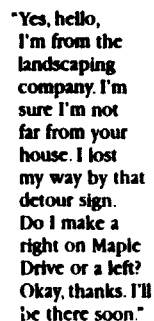
AT&T Wireless Services  
arranges everything for your  
Cellular service that enables  
you to make local cellular  
calls and cellular long dis-  
tance calls to almost anyone,  
anytime. A free portable cel-  
lular phone. Valuable savings  
on the AT&T Long Distance  
calls you make from home.  
An unsurpassed level of cus-  
tomer service whenever you  
need help. What's more, for  
your convenience, you can  
choose to have your cellular  
calls and your AT&T Long  
Distance calls from home  
appear on a single bill. And  
you'll enjoy the peace of  
mind of knowing that your  
new cellular service comes  
from an experienced com-  
pany committed to quality  
and value. So just give us a  
call today to order cellular  
service from AT&T Wireless  
Services. 1-800-532-8892  
ext. 28229.



"Hi, it's me.  
I stopped off to  
get something  
to eat. Just  
checking in for  
my messages.  
Did that couple  
drop off the  
signed contract?"



"Hey, I've been  
waiting to hear  
from you, slugger.  
How'd it go? See,  
I knew you'd do  
great. Are you  
ready? I'm just  
leaving the dry  
cleaner now. I'll  
pick you up in  
10 minutes."



"Listen, I just got here and we really don't have enough trees for the whole backyard. Can you send somebody up with four or five more. Thanks. And tell him to watch out for the detour sign."

# affordable

[illegible]

**"Are you really going to be that late? No, don't worry I'll pick up the kids at the day care center. No problem. I'm almost done here anyway."**



"We just stopped at the video store on the way home. What was the name of that movie you wanted to see? Just a second, I'm looking for it. Hey, we're in luck. There's one copy left."

\*Requires new activation on a 12 month service contract. Credit approval required. A maximum cancellation fee of up to \$200 applies for early termination. This offer cannot be combined with other promotional offers. Other conditions, charges, taxes, and exclusions apply. Partial minutes are rounded up and billed as a full minute so total number of included minutes will vary. Unused monthly cellular airtime and residential AT&T Long Distance minutes included in this offer cannot be carried

over to the next month. Offer available through 12/31/96. There is a \$6.50 per phone shipping and handling charge. Limit 2 phones per customer. To receive residential AT&T Long Distance minutes included in this offer you must remain an AT&T Long Distance customer on your home phone, as well as remain enrolled in your AT&T cellular plan. Includes direct dialed domestic calls only. Certain conditions and exceptions apply. Subject to billing availability.



P.O. Box 9399  
Farmingdale, NY 11735-9399

PRESORTED  
FIRST-CLASS MAIL  
5 POSTAGE  
PAID  
AT&T

\*\*\*\*\* AUTOOCR\*\*C003

Jay Liotta

8 Manchester Dr.

Whippany, NJ 07981-1615



**An extraordinary offer that's making  
cellular communication an everyday convenience.**

• Free cellular phone • 30 minutes of residential  
AT&T Long Distance included each month • 30 minutes of local  
cellular airtime included every month for a year



You've got a life.  
Now get the phone to go with it.



**Introducing a special limited-time  
offer from AT&T.**

\*\*\*\*\* AUTOOCR\*\*C003

Jay Liotta  
8 Manchester Dr.  
Whippany, NJ 07981-1615



Dear Jay Liotta:

I'm sure you know that a cellular phone can be very helpful in the event of an emergency. But did you also know that a cellular phone can be extremely useful in your everyday life as well?

Just think about when a cellular phone would come in handy. You can call to say you'll be late when you're stuck in traffic. Your family can reach you when you're out running errands. You can check in for important messages from almost anywhere.

And now, because you're a valued AT&T customer, you're invited to take advantage of a special offer that can help make cellular service an everyday convenience for you — as well as bring you valuable savings on your AT&T Long Distance service at home.

**Offer includes a free cellular phone, local cellular airtime,  
and AT&T Long Distance minutes from your home phone.**

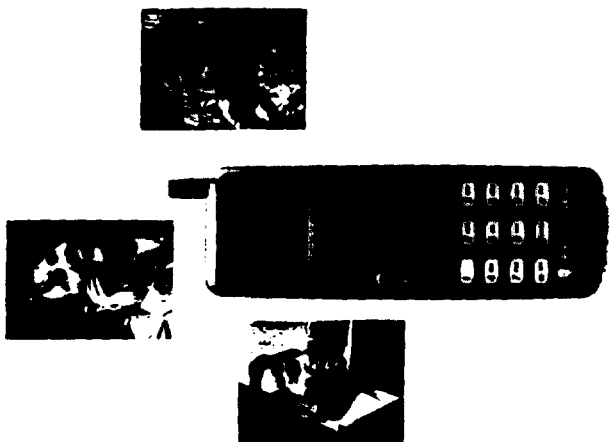
Just sign up with AT&T Wireless Services for only \$29.99<sup>1</sup> a month and you'll get:

- A free AT&T 3810 cellular phone.<sup>2</sup>
- Up to 30 minutes of AT&T Long Distance on your home phone included every month.<sup>3</sup>
- Up to 30 minutes of local cellular airtime included every month for a full year.



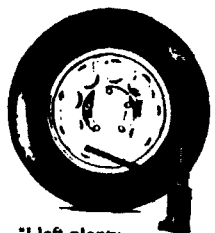


**AT&T**  
Your True Choice™



You've got a life.  
Now get the phone  
to go with it.





"I left plenty of time to get to the airport, but I didn't factor in car trouble. Fortunately, I've got my cellular phone, so the tow truck is on its way. And I called a cab. I'll be there as soon as I can."

**TAXI**

"I'm in the cab now and traffic isn't so bad. The driver says we'll be at the airport in about twenty minutes. Is Tim there? Maybe he can brief me now, since I'll be walking into the meeting late."



"You still have two tickets left? For Saturday night? Fantastic. Okay, I'll hold. I'm just waiting here at the airport."



"Yeah, the meeting went really well. I'm about to go into the supermarket. What kind of pasta did you say you wanted? The long thin kind? The short fat kind? How about bow ties?"



"Good news! They accepted your offer. Do you want to see the house again? Okay, I just have to drop my son off at softball practice. Meet me at my office in about half an hour."



"Mom, I'm so glad you're feeling better. Yes, it must have been something you ate. Got to run, I'm late for an appointment. Give my love to Dad. Remember, we'll be over tomorrow with the kids."

## complete

AT&T Wireless Service arranges everything for you. Cellular service that enables you to make local cellular calls and cellular long distance calls to almost anyone, anytime. A free portable cellular phone. Valuable savings on the AT&T Long Distance calls you make from home. An unsurpassed level of customer service whenever you need help. What's more, for your convenience, you can choose to have your cellular calls and your AT&T Long Distance calls from home appear on a single bill! And you'll enjoy the peace of mind of knowing that your new cellular service comes from an experienced company committed to quality and value. So just give us a call today to order cellular service from AT&T Wireless Services. 1-800-532-8892 ext. 28229.



"Hi, it's me. I stopped off to get something to eat. Just checking in for my messages. Did that couple drop off the signed contract?"



"Hey, I've been waiting to hear from you, slugger. How'd it go? See, I knew you'd do great. Are you ready? I'm just leaving the dry cleaner now. I'll pick you up in 10 minutes."



"Yes, hello, I'm from the landscaping company. I'm sure I'm not far from your house. I lost my way by that detour sign. Do I make a right on Maple Drive or a left? Okay, thanks. I'll be there soon."



"Listen, I just got here and we really don't have enough trees for the whole backyard. Can you send somebody up with four or five more. Thanks. And tell him to watch out for the detour sign."

## affordable

With this special offer, we've included AT&T cellular service, AT&T Wireless Service, and AT&T Long Distance Service. You'll get a free AT&T cellular phone with 200 minutes of cellular service included. Plus, we've included a full year of AT&T Long Distance Service. That's a total of 200 minutes of cellular service and a full year of AT&T Long Distance Service. For you, like AT&T, it's all in one sign up now. Call 1-800-532-8882, ext. 25229. That's a real deal.



"Are you really going to be that late? No, don't worry. I'll pick up the kids at the day care center. No problem. I'm almost done here anyway."



"We just stopped at the video store on the way home. What was the name of that movie you wanted to see? Just a second, I'm looking for it. Hey, we're in luck. There's one copy left."

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